IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3872 OF 2006

Principal,
Government Polytechnic ..Petitioner.

Vs.

Arun Govind Kulkarni ..Respondent.

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Mr. K.S. Patil for the Petitioner.
Mr. K.S. Bapat for the Respondent.

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CORAM: DR. D.Y. CHANDRACHUD, J.

14th July, 2006.

P.C. :

1. The Respondent was initially appointed as a clerk-cum -typist on 24th October, 1996 for a period of 29 days. The appointment of the Respondent was in pursuance of a scheme promoted by the Ministry of Human Resources Development of the Union Government. Subsequently further orders of appointment for a similar period were issued to the Respondent, the last of them being on 25th August, 1997. Thereafter the services of the Respondent have been continued by the Petitioner without any formal order. The Respondent has been paid a consolidated salary of Rs.1,500/- per month. A complaint of unfair labour practices was filed before the Industrial Court at Sangli on 10th

December, 2003 under items 6, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Respondent sought permanent appointment in service and in addition also sought arrears of pay, yearly increments and consequential benefits.

2. The Industrial Court by its order dated 28th April, 2006 has adverted to the Community Polytechnic Scheme promoted by the Government of India. This scheme is implemented through existing Government polytechnics such as the Petitioner. The scheme, it may be noted, contemplates that the existing expertise and facilities of polytechnics would be used in imparting qualitative need based training to the deprived sections of the society in employable skills. Chapter VI of the scheme lays down financial norms and guidelines, and under the scheme a total wage bill of Rs.4.42 lacs is provided as a recurring grant to the polytechnic which implements the scheme. The scheme contemplates in Clause 6.7 that all staff inducted under the scheme would be taken purely on contract basis under an agreement with the polytechnic and the employee concerned. The scheme specifically provides that no question of regularization of the services of the

employees would arise since it is purely a planned scheme promoted by the Human Resources Department of the Government of India. Under the scheme, the staff structure is laid down in Clause 6.4. One post of clerk–cum-typist is envisaged on a contractual basis at a monthly salary of Rs.1,500/-. Clause 6.9 of the scheme, however, provides as follows:

> "6.9 The wages paid to different categories of staff engaged under the scheme shall not be lower than the minimum wages notified for the similar category of workers in the order of State Governments prevailing in the district concerned. To this extent, the amounts indicated above can be adjusted at the institute level without seeking any prior approval from this Ministry. However, the adjustment shall be within the overall financial ceiling for wage bill indicated above. In case the remuneration of a particular category is enhanced as per the 'minimum wages' there would be a commensurate reduction in the number of personnel."

3. The Industrial Court on the basis of the oral and documentary evidence that was placed on the record has correctly come to the conclusion, in a carefully considered judgment that the Respondent would not be entitled to permanent appointment or to regularization. The Industrial Court has noted that though apart from the Community Polytechnic Scheme the Respondent had also carried out work for the Government Polytechnic, he had from time

to time been paid additional emoluments for the work which was performed. The Respondent had entered into an agreement by which he accepted that his appointment was on a contractual basis. In these circumstances, the Industrial Court held that there was no question of any breach of item 6 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 . The contention of the Respondent that he had agreed under coercion had been negatived.

4. The Industrial Court, however, has dealt with the submission urged in the alternative that even under the terms of the scheme, the Respondent was entitled to minimum wages prescribed by the Government of Maharashtra for the post of clerk-cum-typist. As already noted above, under clause 6.9 the wages paid to the different categories of staff engaged under the scheme are not to be lower than the minimum wages notified for a similar category of workers in the orders of the State Government prevailing in the district concerned. The salaries which are prescribed in Clause 6.4 of the scheme are therefore subject to the further condition in clause 6.9 that in any event the wages should not be below the minimum wages that are notified for the

category of workers concerned for the district in question. The Industrial Court has noted that the Government of Maharashtra has prescribed the pay scale of Rs.3,050 – 4,590 for the post of clerk-cum-typist under the Maharashtra Civil Services (Revised Pay) Rules 1998 for the Higher Technical Education and Employment Department. On this basis, the Industrial Court held that this was the minimum pay scale that should be applied within the meaning of Clause 6.9. There is merit in the grievance of the management that what Clause 6.9 of the scheme contemplates is that the wages that are paid should not be more than the minimum wages for the concerned category of workers in that district. This cannot be equated with the pay scale notified by the State Government for its own employees under the Civil Services Rules. The Management has pointed out that the total wage bill which is allowable is fixed at Rs.4.42 lacs. If the management is required to equate the salaries payable to the contractual employees with the salaries which are payable under the regular pay scales of the State Government, the scheme itself would have to close down for want of adequate funds. In Clause 6.4 as many as ten different categories of staff have been provided for ranging from the Project Officer to a helper. Therefore the salaries of any one category

cannot be looked at in isolation. In these circumstances, the final direction that was issued by the Industrial Tribunal to the effect that the management must pay to the Respondent the pay scale that is applicable to the post of clerk- cum-typist working under the Government of Maharashtra in the Higher Technical Education and Employment Department from the date of his appointment cannot be sustained. Consequently, it would be necessary to set aside operative direction (4) contained in the impugned order of the Industrial Court. Learned counsel before the Court are fairly agreed in stating before the Court that there is no evidence on the record as it stands that would enable this Court to determine what are the minimum wages notified for the similar category of workers for the concerned district in the present case which is Sangli. In these circumstance, it would be appropriate and proper if the case is remanded bank to the Industrial Court for the purposes of redetermining the wages to which the Respondent would be entitled to in terms of clause 6.9 of the scheme. For the aforesaid purpose it would be open to the parties to lead additional evidence before the Industrial Court. The Industrial Court shall make its final determination expeditiously preferably within a period of six months from today. In the meantime, there is merit in the grievance of the

Respondent that some additional payment should be directed to be made to him by the management on an ad hoc basis subject to final adjustment upon the final determination of the Industrial Court. The evidence of the management's witness Mr. Yeshwant Balkrishna Kulkarni shows in paragraph 23 of the notes of cross examination that the management has in fact paid the Respondent at the rate of Rs.2,500/- per month for the period between October 2001 and January 2002. Subsequently, however, after the management started receiving grants under the scheme, the remuneration was reduced to Rs.1,500/- per month. At this stage, pending the final determination of the question by the Tribunal, it would be appropriate to direct the management to pay to the Respondent an additional amount of Rs.1,000/- per month with effect from the month of December 2003 which is the date of the filing of the complaint before the Industrial Court. The payment to the aforesaid extent shall be effected within a period of two months from today.

5. The direction contained in Clause (6) of the operative order of the Industrial Court to the extent that the Respondent should be allowed to continue to work under the Community

Polytechnic scheme so long as the scheme is continued/ implemented by the Respondent Institute, shall not preclude the management from reviewing both the need and performance of the Respondent under the terms of the contract. Since there are two posts of junior clerks vacant in the Government Polytechnic, the Industrial Court has directed that the case of the Respondent for absorption may be considered by following the procedure required under the law. This part of the order of the Industrial Court is unexceptionable. The claim of the Respondent has been directed to be considered strictly in accordance with law.

6. Accordingly while setting aside the directions in clause 4 of the operative order of the Industrial Court, the proceedings are remitted back for a fresh determination of the minimum wages payable to the Respondent under Clause 6.9 of the scheme. Counsel appearing for the Respondent has submitted before the Court that there is no schedule of employment available in so far as education is concerned under the notifications issued under the Minimum Wages Act. In the event that this be so, it is needless to add that it would be open to the parties to lead evidence in regard to the applicable minimum wages in similar employments involving

similar nature of work.

The Petition is accordingly disposed of in the aforesaid directions.